

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

JOHN EUGENE LEAKE,
pro se Plaintiff,

v.

NANCY A. BERRYHILL,
Acting Commissioner of Social Security,
Defendant.

Civil No. 3:18cv569 (JAG)

REPORT AND RECOMMENDATION

This matter comes before the Court pursuant to 28 U.S.C. § 636(b)(1)(B) on Defendant's Motion to Transfer (ECF No. 9). Having reviewed Defendant's submission and with no response from Plaintiff John Eugene Leake ("Plaintiff"), the Court recommends that Defendant's Motion to Transfer (ECF No. 9) be GRANTED and that the case be transferred to the Charlottesville Division of the United States District Court for the Western District of Virginia.

Plaintiff, proceeding *pro se*, seeks judicial review pursuant to 42 U.S.C. § 405(g) of the final decision of the Commissioner denying his application for benefits under the Social Security Act (the "Act"). The Act provides, in pertinent part, that a civil action challenging the final decision of the Commissioner "shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business" 42 U.S.C. § 405(g).

In his Complaint (ECF No. 3), Plaintiff recorded that he lived in Culpeper, Virginia, which is within Culpeper County. (Compl. at 1.) Plaintiff did not record any principal place of business within the Eastern District of Virginia. The Local Rules for the Western District of

Virginia provide that Culpeper County is within the Charlottesville Division of that District. W.D. Va. Gen. R. 2(a)(3). The Local Rules further provide that to determine the appropriate division in which a plaintiff must sue, a litigant should interpret the venue rules of the United States Code to replace the terms “judicial district” and “district” with “division.” W.D. Va. Gen. R. 2(b). Thus, the Act, as read through the Local Rules of the Western District of Virginia, requires Plaintiff to sue “in the district court for the United States for the [division] in which the plaintiff resides” Because Plaintiff resides in Culpeper County, which lies within the Charlottesville Division of the Western District of Virginia, transfer to that court is proper.

Accordingly, the Court recommends that Defendant’s Motion to Transfer (ECF No. 9) be GRANTED, and that this case be transferred to the Charlottesville Division of the Western District of Virginia.

Let the Clerk forward a copy of this Report and Recommendation to United States District Judge John A. Gibney, Jr., *pro se* Plaintiff at his address of record and all counsel of record.

NOTICE TO PARTIES

Failure to file written objections to the proposed findings, conclusions and recommendations of the Magistrate Judge contained in the foregoing report within fourteen (14) days after being served with a copy of this report may result in the waiver of any right to a de novo review of the determinations contained in the report and such failure shall bar you from attacking on appeal the findings and conclusions accepted and adopted by the District Judge except upon grounds of plain error.

Richmond, Virginia
Date: October 2, 2018.

/s/

David J. Novak
United States Magistrate Judge

